IP 04-0771-C B/G Stines v M.R.S. Associates
Judge Sarah Evans Barker Signed on 9/30/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LENA M. STINES,	)	
	)	
Plaintiff,	)	
vs.	)	NO. 1:04-cv-00771-SEB-JPG
	)	
M.R.S. ASSOCIATES, INC.,	)	
	)	
Defendant.	)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LENA M. STINES, individually and as next friend of SYLVIA R.HICKMAN, Plaintiffs,	)	
vs.	)	**1:04-CV-0771-SEB-JPG**
M.R.S. ASSOCIATES, INC., Defendant.	)	

ENTRY ON DEFENDANTS MOTION FOR SUMMARY JUDGMENT

This case involves a challenge to a form dunning letter sent by the Defendant, M.R.S. Associates, Inc. ("M.R.S.") to Plaintiff, Sylvia R. Hickman. Plaintiffs allege that the letter violates the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692e and 1692g. M.R.S. argues that the letter is not in violation of the Act and, for the reasons set forth in this entry, we agree and grant summary judgment in its favor.

I. Summary Judgment Standard

Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A genuine issue of material fact exists if there is sufficient evidence for a reasonable jury to return a verdict in favor of the non-moving party on the particular issue. *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, (1986). In considering a motion for summary judgment, a court must review the record and draw all reasonable inferences in the light most

favorable to the non-moving party. *Id.* at 255; *Del Raso v. United States*, 244 F.3d 567, 570 (7th Cir. 2001). "[A] party will be successful in opposing summary judgment only when they present definite, competent evidence to rebut the motion." *Smith on Behalf of Smith v. Severn*, 129 F.3d 419, 427 (7th Cir. 1997). Moreover, summary judgment is often particularly appropriate where the language of a document or contract is at issue. *See, e.g., Ooley v. Schwitzer Div., Household Mfg., Inc.*, 961 F.2d 1293, 1298 (7th Cir. 1992).

II. Factual Background

M.R.S. was retained by Capital One to collect the unpaid credit card debt of Ms. Hickman. Ms. Hickman has signed a limited power of attorney, appointing her mother, Lena Hines, as her attorney-in-fact. Indeed, due to a physical disability of Ms. Hickman, Ms. Hines was the person who actually received and dealt with the collection letter at issue in this matter. As its first action after receiving the collection assignment on the credit card account, M.R.S. sent Ms. Hickman a form letter dated July 26, 2003 announcing its retention by Capital One to collect the past due balance and setting forth the amount of that balance. More specifically, the one page letter contains a cut-away mailing receipt at the top which sets forth Hickman's name and address as well as those of M.R.S.. This upper portion of the letter, designed to be cut off and returned with a payment, also sets forth four small labeled boxes which contain a printed reference to Capital One as the creditor, the Capital One account number, the M.R.S. account number and an account balance of $805.32. Underneath the boxes, in parentheses, is the phrase "[i]nterest may accrue on unpaid balances." The lower part of the letter starts by providing the same information as is contained in the top boxes and then sets forth a narrative:

RE: CAPITAL ONE
CLT ACCT#: 5291071747108494
MRS ACCT# 03350900
ACCOUNT BALANCE: $805.32 (Interest may accrue on unpaid balances)

Dear SYLVIA R. HICKMAN,

The above referenced client has placed your account with our office for collection. This decision was made due to your continued failure to meet your contractual obligation. If for some reason you believe this debt is not valid, please review your rights listed at the bottom of this letter.

If the debt is not in dispute, then you have an important decision to make: honor your contractual obligation and receive significant positive benefits from satisfying the debt or continue not honoring your contractual obligation and face the possibility of negative consequences. The negative consequences are determined by the terms and conditions of your contract, the applicable laws in your state, and our client's willingness to incur additional costs and expenses (which may in turn be passed on to you!).

Clearly our client would prefer to work with you than against you, however, the decision to proceed with further collection activity is determined by you and your willingness to honor your commitment.

Which would you prefer the positive benefits or negative consequences? The choice is yours!

IMPORTANT CONSUMER INFORMATION

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

This is an attempt to collect a debt and any information obtained will be used for that purpose. This communication is from a debt collection agency.

Sincerely,
/s/ B. Simone
B. Simone
Director of Operations 1-877-774-7992
M.R.S. ASSOCIATES, INC.

The FDCPA forbids a debt collector from providing a false or misleading representation as to the amount or legal status of the debt owed or from using any deceptive means to collect the debt. 15 U.S.C. § 1692e. It also requires the debt collector to send the consumer a written notice containing, among other things, the amount of the debt and a statement regarding the consumer's right to dispute or validate the debt which is sought to be collected from her. 15 U.S.C. § 1692g. The language contained beneath the underlined heading "IMPORTANT CONSUMER INFORMATION" in the letter at issue here is taken, nearly word for word, from the provisions of section 1692g(4) and (5) regarding debt validation rights.

III. Discussion

Plaintiffs have two complaints with regard to the letter. First, they argue that the letter is confusing and misleading as to the amount M.R.S. is attempting to collect. They point to the fact that an account balance is given, but then the consumer is also told that "interest may accrue on unpaid balances." This, they argue is misleading, in violation of 15 U.S.C. § 1692e and fails accurately set forth the amount of the debt in violation of 15 U.S.C. § 1692g. Second, they maintain that the part of the narrative that reads "[i]f for some reason you believe this debt is not valid, please review your rights listed at the bottom of this letter", is confusing and sets forth an impermissible condition on the consumer's exercise of validation rights by implying that he or she must have a "reason" in order to dispute the debt. Plaintiffs claim this violates 15 U.S.C. §

1692g because M.R.S. has failed to clearly set forth the consumer's right to validate any debt that is the subject of collection.

When determining whether a debt collection letter violates sections 1692e or 1692g, we must examine the letter from the viewpoint of an unsophisticated consumer. *Durkin v. Equifax Check Services, Inc.*, 406 F.3d 410, 414 (7th Cir. 2005). That is not to say that we must imagine what the "least" sophisticated of consumers might think; rather, it is an objective standard that does not require us to consider peculiar, bizarre, unrealistic or idiosyncratic interpretations of the letter. *Id*. Further, though both sides ask us to consider how another district court judge has ruled on recent challenges to similar letters sent by M.R.S. (Compare, *Mendez v. M.R.S. Associates, a New Jersey Corp.*, Slip Copy, 2005 WL 1564977, (N.D.Ill., June 27, 2005), with, *Lucas v. M.R.S. Associates, Inc.*, Slip Copy, 2005 WL 1926570, (N.D.Ind.,August 11, 2005)), we are not bound by the decisions of other district courts and like all trial court opinions they provide limited precedential value at best. *TMF Tool Co., Inc. v. Muller*, 913 F.2d 1185, 1191 (7th Cir. 1990). That is especially true here where there is adequate interpretation of the law as applied to similar facts from our Court of Appeals.

In *Chuway v. National Action Financial Services, Inc.*, 362 F.3d 944 (7th Cir. 2004) the Seventh Circuit walked us through the appropriate analytical steps a court takes in reviewing a challenge to the clarity of a dunning letter. "If it is apparent just from reading the letter that it is unclear" and "the plaintiff testifies credibly that she was indeed confused" and is representative of the type of people this or similar letters are sent to, then a prima facie case has been made and, at a minimum, there is a question of fact for trial. *Id.* at 948. "But if it is unclear whether the letter would confuse intended recipients of it, then to make out a prima facie case the plaintiff

has to go further and present evidence (beyond her own say-so) of confusion, for example in the form of a carefully designed and conducted consumer survey." *Id.* Only if it would confuse a significant fraction of the persons to whom it is directed will a dunning letter subject the collection agency to liability for lack of clarity. *Id.*

Plaintiffs argue that a recipient of this letter would be confused as to the amount of the debt because, in addition to presenting a balance due of $805.32, it states that interest could be accruing on the unpaid balance. In other words, according to Plaintiffs, the additional reference to interest potentially accruing confuses the reader with regard to the amount actually being sought by M.R.S.. However, shortly after issuing the *Chuway* decision, the Seventh Circuit reviewed a case where there were similar allegations of confusion with respect to statements in a dunning letter regarding the continued accrual of interest on the underlying debt. In *Taylor v. Cavalry Inv., L.L.C.*, 365 F.3d 572 (7th Cir. 2004), a consolidated case, the court examined two separate dunning letters, both of which were said to be confusing with regard to the amount of the debt to be collected. The first letter set forth a principal balance, the interest owed and the total balance, followed later in the letter by a statement that "[i]f applicable your account may have or will accrue interest at a rate specified in your contractual agreement with the original creditor." *Id.* at 574. The second letter similarly provided a principal balance, the amount of interest owed and a total balance due, followed by a statement that "[y]our account balance may be periodically increased due to the addition of accrued interest or other charges as provided in your agreement with your creditor." *Id.* at 575. The Seventh Circuit found both of the letters to be a "clear statement of a truism." *Id.* We find the same to be true here despite the Plaintiffs' plea that the letter at issue fails to breakdown the debt into the principal and interest components

of the total amount due. While the letters in *Taylor* may be even more clear than the one at issue here, a debt collector is not held to a standard of using the language or form with the most clarity. Otherwise, there would be but one form letter acceptable under the Act. All the letter has to do is let an unsophisticated consumer know, with reasonable clarity, the amount of the debt sought to be collected. *Id*. at 574.

Plaintiffs have an additional complaint though. The language in the narrative that directs the reader to review her debt verification rights at the bottom of the page, should she believe for some reason that the debt is not valid, is said to be an implied limitation on those rights because it suggests that "a reason" is required to exercise the rights. We find this to be just the type of ingenious or idiosyncratic interpretation that *Durkin* and *Chuway* instruct us to ignore. *Durkin*, 406 F.3d at 414; *Chuway*, 362 F.3d at 948. M.R.S. set forth the debt validation language required by the FDCPA for a dunning letter. It even underlined and bolded the heading above the language to alert the consumer to her rights. Only a highly educated person, such as an attorney looking to find fault in a letter, would postulate that the additional reference to that section of the letter, through a statement that it should be referred to "if for some reason" the consumer questions the validity of the debt, puts an unacceptable condition on the exercise of those rights.

Noticeably missing from Plaintiffs' filings and submissions is any affidavit or other acceptable affirmation indicating that either of the Plaintiffs were confused by the letter. There is not even a specific allegation to that effect. The complaint contains a general allegation that

the letter is "confusing and misleading"; however, the credible testimony of confusion from the complaining party that *Durkin* and *Chuway* anticipate, and indeed require, is missing. *Durkin*, 406 F.3d at 415; *Chuway*, 362 F.3d at 948. Furthermore, even if such testimony had been provided it would not be enough. Where it is not apparent from a reading of the letter that it is confusing, the plaintiff must then rely upon additional evidence demonstrating confusion on the part of the unsophisticated consumer, such as a carefully crafted consumer survey. *Durkin*, 406 F.3d at 415; *Chuway*, 362 F.3d at 948. The letter does not appear the least bit confusing to the court and Plaintiffs have failed to offer any evidentiary support for the notion that it is.

IV. Conclusion

For the reasons discussed in this entry, Defendant's Combined Motion to Stay Ruling on Plaintiff's Motion For Class Certification and Motion for Summary Judgment (Docket # 28) is GRANTED, insofar as judgment shall issue in favor of the Defendant.

SO ORDERED this ___ day of September 2005.

_____
SARAH EVANS BARKER, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

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